

AMENDED IN ASSEMBLY MAY 10, 2005
AMENDED IN ASSEMBLY MARCH 14, 2005
CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 333

Introduced by Assembly Member Harman

February 10, 2005

An act to amend Section 25009 of the Business and Professions Code, to amend Sections 94, 1005, 1283, 1985.6, 1991.2, 2025.330, 2032.510, 2032.530, 2035.010, 2035.030, 2035.050, and 2035.060 of, and to amend the heading of Chapter 12 (commencing with Section 2029.010) of Title 4 of Part 4 of, the Code of Civil Procedure, to amend Section 44944 of the Education Code, to amend Section 1560 of the Evidence Code, to amend Sections 12963.3, 12972, and 68097.6 of the Government Code, to amend Section 1424.1 of the Health and Safety Code, to amend Section 11580.2 of the Insurance Code, and to amend Section 1524 of the Penal Code, relating to civil discovery.

LEGISLATIVE COUNSEL'S DIGEST

AB 333, as amended, Harman. Civil discovery.

(1) Under existing law, a party to a limited civil case, as defined, is permitted to take only one oral or written deposition as to each adverse party.

This bill would provide that a deposition of an organization shall be treated as a single deposition for purposes of this provision even though more than one person may be designated or required to testify, as specified.

(2) Existing law generally requires depositions to be conducted under the supervision of an officer who shall put the deponent under

oath. The testimony, as well as any stated objections, are required to be taken stenographically, except as specified. Existing law also authorizes the party who notices the deposition to record the testimony by audio or video technology, as specified. Existing law permits any other party to make a simultaneous audio or video record of the deposition.

This bill would require the deposition officer to put the deponent under oath or affirmation ~~and to personally, or by someone acting under the officer's direction and in his or her presence, record the testimony of the witness.~~ The bill also would require the testimony and any stated objections, when taken stenographically, to be taken by a certified shorthand reporter. This bill would delete the requirement that the making of the audio or video record of a deposition by a nondeposing party be simultaneous.

(3) Existing law, the Civil Discovery Act, operative July 1, 2005, authorizes a person who expects to be a party to a lawsuit in a California state court to petition to conduct discovery before the lawsuit is filed under specified circumstances.

This bill also would authorize presuit discovery when the contemplated lawsuit would be filed by or against the petitioner's successor in interest, under specified conditions.

(4) The Civil Discovery Act provides that a deposition taken pursuant to its provisions or under comparable provisions of the laws of another state, or the federal courts, or a foreign nation, is admissible in a court of this state.

This bill would provide that a deposition is admissible in a court of this state if it was taken under the provisions of the act or under comparable provisions of another state in which it was taken, or the federal courts, or a foreign nation in which it was taken.

(5) The Civil Discovery Act generally provides for the scope of discovery in civil actions and proceedings, the use of technology in conducting discovery in a complex case, the attorney work product, the methods and sequence of discovery, nonparty discovery, sanctions, the time for completion of discovery, the oral deposition inside California, the oral deposition outside California, depositions by written questions, depositions in actions pending outside California, written interrogatories, inspection and production of documents, tangible things, land and other property, physical or mental examination, requests for admission, form interrogatories and requests for admission, simultaneous exchange of expert witness

information, the perpetuation of testimony or preservation of evidence before filing an action, and the perpetuation of testimony or preservation of information pending appeal.

This bill would make various nonsubstantive, technical, and conforming changes to these and related provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25009 of the Business and Professions
2 Code is amended to read:
3 25009. Any defendant in any action brought under this
4 chapter or any person who may be a witness therein under Title 4
5 (commencing with Section 2016.010) of Part 4 of the Code of
6 Civil Procedure or Section 776 of the Evidence Code, and the
7 books and records of the defendant or witness, may be brought
8 into court and the books and records may be introduced by
9 reference into evidence, but no information so obtained may be
10 used against the defendant or the witness as a basis for a
11 misdemeanor prosecution under this chapter.
12 SEC. 2. Section 94 of the Code of Civil Procedure is
13 amended to read:
14 94. Discovery is permitted only to the extent provided by this
15 section and Section 95. This discovery shall comply with the
16 notice and format requirements of the particular method of
17 discovery, as provided in Title 4 (commencing with Section
18 2016.010) of Part 4. As to each adverse party, a party may use
19 the following forms of discovery:
20 (a) Any combination of 35 of the following:
21 (1) Interrogatories (with no subparts) under Chapter 13
22 (commencing with Section 2030.010) of Title 4 of Part 4.
23 (2) Demands to produce documents or things under Chapter
24 14 (commencing with Section 2031.010) of Title 4 of Part 4.
25 (3) Requests for admission (with no subparts) under Chapter
26 16 (commencing with Section 2033.010) of Title 4 of Part 4.
27 (b) One oral or written deposition under Chapter 9
28 (commencing with Section 2025.010), Chapter 10 (commencing
29 with Section 2026.010), or Chapter 11 (commencing with
30 Section 2028.010) of Title 4 of Part 4. For purposes of this

1 subdivision, a deposition of an organization shall be treated as a
2 single deposition even though more than one person may be
3 designated or required to testify pursuant to Section 2025.230.

4 (c) Any party may serve on any person a deposition subpoena
5 duces tecum requiring the person served to mail copies of
6 documents, books or records to the party's counsel at a specified
7 address, along with an affidavit complying with Section 1561 of
8 the Evidence Code.

9 The party who issued the deposition subpoena shall mail a
10 copy of the response to any other party who tenders the
11 reasonable cost of copying it.

12 (d) Physical and mental examinations under Chapter 15
13 (commencing with Section 2032.010) of Title 4 of Part 4.

14 (e) The identity of expert witnesses under Chapter 18
15 (commencing with Section 2034.010) of Title 4 of Part 4.

16 SEC. 3. Section 1005 of the Code of Civil Procedure is
17 amended to read:

18 1005. (a) Written notice shall be given, as prescribed in
19 subdivisions (b) and (c), for the following motions:

20 (1) Notice of Application and Hearing for Writ of Attachment
21 under Section 484.040.

22 (2) Notice of Application and Hearing for Claim and Delivery
23 under Section 512.030.

24 (3) Notice of Hearing for Claim of Exemption under Section
25 706.105.

26 (4) Motion to Quash Summons pursuant to subdivision (b) of
27 Section 418.10.

28 (5) Motion for Determination of Good Faith Settlement
29 pursuant to Section 877.6.

30 (6) Hearing for Discovery of Peace Officer Personnel Records
31 pursuant to Section 1043 of the Evidence Code.

32 (7) Notice of Hearing of Third-Party Claim pursuant to
33 Section 720.320.

34 (8) Motion for an Order to Attend Deposition more than 150
35 miles from deponent's residence pursuant to Section 2025.260.

36 (9) Notice of Hearing of Application for Relief pursuant to
37 Section 946.6 of the Government Code.

38 (10) Motion to Set Aside Default or Default Judgment and for
39 Leave to Defend Actions pursuant to Section 473.5.

1 (11) Motion to Expunge Notice of Pendency of Action
2 pursuant to Section 405.30.

3 (12) Motion to Set Aside Default and for Leave to Amend
4 pursuant to Section 585.5.

5 (13) Any other proceeding under this code in which notice is
6 required and no other time or method is prescribed by law or by
7 court or judge.

8 (b) Unless otherwise ordered or specifically provided by law,
9 all moving and supporting papers shall be served and filed at
10 least 16 court days before the hearing. The moving and
11 supporting papers served shall be a copy of the papers filed or to
12 be filed with the court. However, if the notice is served by mail,
13 the required 16-day period of notice before the hearing shall be
14 increased by five calendar days if the place of mailing and the
15 place of address are within the State of California, 10 calendar
16 days if either the place of mailing or the place of address is
17 outside the State of California but within the United States, and
18 20 calendar days if either the place of mailing or the place of
19 address is outside the United States, and if the notice is served by
20 facsimile transmission, express mail, or another method of
21 delivery providing for overnight delivery, the required 16-day
22 period of notice before the hearing shall be increased by two
23 calendar days. Section 1013, which extends the time within
24 which a right may be exercised or an act may be done, does not
25 apply to a notice of motion, papers opposing a motion, or reply
26 papers governed by this section. All papers opposing a motion so
27 noticed shall be filed with the court and a copy served on each
28 party at least nine court days, and all reply papers at least five
29 court days before the hearing.

30 The court, or a judge thereof, may prescribe a shorter time.

31 (c) Notwithstanding any other provision of this section, all
32 papers opposing a motion and all reply papers shall be served by
33 personal delivery, facsimile transmission, express mail, or other
34 means consistent with Sections 1010, 1011, 1012, and 1013, and
35 reasonably calculated to ensure delivery to the other party or
36 parties not later than the close of the next business day after the
37 time the opposing papers or reply papers, as applicable, are filed.
38 This subdivision applies to the service of opposition and reply
39 papers regarding motions for summary judgment or summary
40 adjudication, in addition to the motions listed in subdivision (a).

1 The court, or a judge thereof, may prescribe a shorter time.

2 SEC. 4. Section 1283 of the Code of Civil Procedure is
3 amended to read:

4 1283. On application of a party to the arbitration, the neutral
5 arbitrator may order the deposition of a witness to be taken for
6 use as evidence and not for discovery if the witness cannot be
7 compelled to attend the hearing or if exceptional circumstances
8 exist as to make it desirable, in the interest of justice and with
9 due regard to the importance of presenting the testimony of
10 witnesses orally at the hearing, to allow the deposition to be
11 taken. The deposition shall be taken in the manner prescribed by
12 law for the taking of depositions in civil actions. If the neutral
13 arbitrator orders the taking of the deposition of a witness who
14 resides outside the state, the party who applied for the taking of
15 the deposition shall obtain a commission, letters rogatory, or a
16 letter or request therefor from the superior court in accordance
17 with Chapter 10 (commencing with Section 2026.010) of Title 4
18 of Part 4.

19 SEC. 5. Section 1985.6 of the Code of Civil Procedure is
20 amended to read:

21 1985.6. (a) For purposes of this section, the following
22 definitions apply:

23 (1) "Deposition officer" means a person who meets the
24 qualifications specified in Section 2020.420.

25 (2) "Employee" means any individual who is or has been
26 employed by a witness subject to a subpoena duces tecum.
27 "Employee" also means any individual who is or has been
28 represented by a labor organization that is a witness subject to a
29 subpoena duces tecum.

30 (3) "Employment records" means the original or any copy of
31 books, documents, other writings, or electronic data pertaining to
32 the employment of any employee maintained by the current or
33 former employer of the employee, or by any labor organization
34 that has represented or currently represents the employee.

35 (4) "Labor organization" has the meaning set forth in Section
36 1117 of the Labor Code.

37 (5) "Subpoenaing party" means the person or persons causing
38 a subpoena duces tecum to be issued or served in connection with
39 any civil action or proceeding, but does not include the state or
40 local agencies described in Section 7465 of the Government

1 Code, or any entity provided for under Article VI of the
2 California Constitution in any proceeding maintained before an
3 adjudicative body of that entity pursuant to Chapter 4
4 (commencing with Section 6000) of Division 3 of the Business
5 and Professions Code.

6 (b) Prior to the date called for in the subpoena duces tecum of
7 the production of employment records, the subpoenaing party
8 shall serve or cause to be served on the employee whose records
9 are being sought a copy of: the subpoena duces tecum; the
10 affidavit supporting the issuance of the subpoena, if any; and the
11 notice described in subdivision (e), and proof of service as
12 provided in paragraph (1) of subdivision (c). This service shall be
13 made as follows:

14 (1) To the employee personally, or at his or her last known
15 address, or in accordance with Chapter 5 (commencing with
16 Section 1010) of Title 14 of Part 2, or, if he or she is a party, to
17 his or her attorney of record. If the employee is a minor, service
18 shall be made on the minor's parent, guardian, conservator, or
19 similar fiduciary, or if one of them cannot be located with
20 reasonable diligence, then service shall be made on any person
21 having the care or control of the minor, or with whom the minor
22 resides, and on the minor if the minor is at least 12 years of age.

23 (2) Not less than 10 days prior to the date for production
24 specified in the subpoena duces tecum, plus the additional time
25 provided by Section 1013 if service is by mail.

26 (3) At least five days prior to service upon the custodian of the
27 employment records, plus the additional time provided by
28 Section 1013 if service is by mail.

29 (c) Prior to the production of the records, the subpoenaing
30 party shall either:

31 (1) Serve or cause to be served upon the witness a proof of
32 personal service or of service by mail attesting to compliance
33 with subdivision (b).

34 (2) Furnish the witness a written authorization to release the
35 records signed by the employee or by his or her attorney of
36 record. The witness may presume that the attorney purporting to
37 sign the authorization on behalf of the employee acted with the
38 consent of the employee, and that any objection to release of
39 records is waived.

1 (d) A subpoena duces tecum for the production of employment
2 records shall be served in sufficient time to allow the witness a
3 reasonable time, as provided in Section 2020.410, to locate and
4 produce the records or copies thereof.

5 (e) Every copy of the subpoena duces tecum and affidavit
6 served on an employee or his or her attorney in accordance with
7 subdivision (b) shall be accompanied by a notice, in a typeface
8 designed to call attention to the notice, indicating that (1)
9 employment records about the employee are being sought from
10 the witness named on the subpoena; (2) the employment records
11 may be protected by a right of privacy; (3) if the employee
12 objects to the witness furnishing the records to the party seeking
13 the records the employee shall file papers with the court prior to
14 the date specified for production on the subpoena; and (4) if the
15 subpoenaing party does not agree in writing to cancel or limit the
16 subpoena, an attorney should be consulted about the employee's
17 interest in protecting his or her rights of privacy. If a notice of
18 taking of deposition is also served, that other notice may be set
19 forth in a single document with the notice required by this
20 subdivision.

21 (f) Any employee whose employment records are sought by a
22 subpoena duces tecum may, prior to the date for production,
23 bring a motion under Section 1987.1 to quash or modify the
24 subpoena duces tecum. Notice of the bringing of that motion
25 shall be given to the witness and the deposition officer at least
26 five days prior to production. The failure to provide notice to the
27 deposition officer does not invalidate the motion to quash or
28 modify the subpoena duces tecum but may be raised by the
29 deposition officer as an affirmative defense in any action for
30 liability for improper release of records.

31 Any nonparty employee whose employment records are sought
32 by a subpoena duces tecum may, prior to the date of production,
33 serve on the subpoenaing party, the deposition officer, and the
34 witness a written objection that cites the specific grounds on
35 which production of the employment records should be
36 prohibited.

37 No witness or deposition officer shall be required to produce
38 employment records after receipt of notice that the motion has
39 been brought by an employee, or after receipt of a written
40 objection from a nonparty employee, except upon order of the

1 court in which the action is pending or by agreement of the
2 parties, witnesses, and employees affected.

3 The party requesting an employee's employment records may
4 bring a motion under subdivision (c) of Section 1987 to enforce
5 the subpoena within 20 days of service of the written objection.
6 The motion shall be accompanied by a declaration showing a
7 reasonable and good faith attempt at informal resolution of the
8 dispute between the party requesting the employment records and
9 the employee or the employee's attorney.

10 (g) Upon good cause shown and provided that the rights of
11 witnesses and employees are preserved, a subpoenaing party
12 shall be entitled to obtain an order shortening the time for service
13 of a subpoena duces tecum or waiving the requirements of
14 subdivision (b) where due diligence by the subpoenaing party has
15 been shown.

16 (h) This section may not be construed to apply to any
17 subpoena duces tecum which does not request the records of any
18 particular employee or employees and which requires a custodian
19 of records to delete all information which would in any way
20 identify any employee whose records are to be produced.

21 (i) This section does not apply to proceedings conducted under
22 Division 1 (commencing with Section 50), Division 4
23 (commencing with Section 3200), Division 4.5 (commencing
24 with Section 6100), or Division 4.7 (commencing with Section
25 6200) of the Labor Code.

26 (j) Failure to comply with this section shall be sufficient basis
27 for the witness to refuse to produce the employment records
28 sought by subpoena duces tecum.

29 SEC. 6. Section 1991.2 of the Code of Civil Procedure is
30 amended to read:

31 1991.2. The provisions of Section 1991 do not apply to any
32 act or omission occurring in a deposition taken pursuant to Title
33 4 (commencing with Section 2016.010). The provisions of
34 Chapter 7 (commencing with Section 2023.010) of Title 4 are
35 exclusively applicable.

36 SEC. 7. Section 2025.330 of the Code of Civil Procedure is
37 amended to read:

38 2025.330. (a) The deposition officer shall ~~do both of the~~
39 ~~following:~~

40 (1) ~~Put the deponent under oath or affirmation.~~

~~(2) Personally, or by someone acting under the officer's direction and in his or her presence, record the testimony of the witness, put the deponent under oath or affirmation.~~

(b) Unless the parties agree or the court orders otherwise, the testimony, as well as any stated objections, shall be taken stenographically. If taken stenographically, it shall be by a person certified pursuant to Article 3 (commencing with Section 8020) of Chapter 13 of Division 3 of the Business and Professions Code.

(c) The party noticing the deposition may also record the testimony by audio or video technology if the notice of deposition stated an intention also to record the testimony by either of those methods, or if all the parties agree that the testimony may also be recorded by either of those methods. Any other party, at that party's expense, may make an audio or video record of the deposition, provided that the other party promptly, and in no event less than three calendar days before the date for which the deposition is scheduled, serves a written notice of this intention to make an audio or video record of the deposition testimony on the party or attorney who noticed the deposition, on all other parties or attorneys on whom the deposition notice was served under Section 2025.240, and on any deponent whose attendance is being compelled by a deposition subpoena under Chapter 6 (commencing with Section 2020.010). If this notice is given three calendar days before the deposition date, it shall be made by personal service under Section 1011.

(d) Examination and cross-examination of the deponent shall proceed as permitted at trial under the provisions of the Evidence Code.

(e) In lieu of participating in the oral examination, parties may transmit written questions in a sealed envelope to the party taking the deposition for delivery to the deposition officer, who shall unseal the envelope and propound them to the deponent after the oral examination has been completed.

SEC. 8. The heading of Chapter 12 (commencing with Section 2029.010) of Title 4 of Part 4 of the Code of Civil Procedure is amended to read:

CHAPTER 12.

DEPOSITION IN ACTION PENDING OUTSIDE CALIFORNIA

1 SEC. 9. Section 2032.510 of the Code of Civil Procedure is
2 amended to read:

3 2032.510. (a) The attorney for the examinee or for a party
4 producing the examinee, or that attorney's representative, shall
5 be permitted to attend and observe any physical examination
6 conducted for discovery purposes, and to record stenographically
7 or by audio technology any words spoken to or by the examinee
8 during any phase of the examination.

9 (b) The observer under subdivision (a) may monitor the
10 examination, but shall not participate in or disrupt it.

11 (c) If an attorney's representative is to serve as the observer,
12 the representative shall be authorized to so act by a writing
13 subscribed by the attorney which identifies the representative.

14 (d) If in the judgment of the observer the examiner becomes
15 abusive to the examinee or undertakes to engage in unauthorized
16 diagnostic tests and procedures, the observer may suspend it to
17 enable the party being examined or producing the examinee to
18 make a motion for a protective order.

19 (e) If the observer begins to participate in or disrupt the
20 examination, the person conducting the physical examination
21 may suspend the examination to enable the party at whose
22 instance it is being conducted to move for a protective order.

23 (f) The court shall impose a monetary sanction under Chapter
24 7 (commencing with Section 2023.010) against any party,
25 person, or attorney who unsuccessfully makes or opposes a
26 motion for a protective order under this section, unless it finds
27 that the one subject to the sanction acted with substantial
28 justification or that other circumstances make the imposition of
29 the sanction unjust.

30 SEC. 10. Section 2032.530 of the Code of Civil Procedure is
31 amended to read:

32 2032.530. (a) The examiner and examinee shall have the
33 right to record a mental examination by audio technology.

34 (b) Nothing in this title shall be construed to alter, amend, or
35 affect existing case law with respect to the presence of the
36 attorney for the examinee or other persons during the
37 examination by agreement or court order.

38 SEC. 11. Section 2035.010 of the Code of Civil Procedure is
39 amended to read:

1 2035.010. (a) One who expects to be a party or expects a
2 successor in interest to be a party to any action that may be
3 cognizable in any court of the State of California, whether as a
4 plaintiff, or as a defendant, or in any other capacity, may obtain
5 discovery within the scope delimited by Chapters 2 (commencing
6 with Section 2017.010) and 3 (commencing with Section
7 2017.710), and subject to the restrictions set forth in Chapter 5
8 (commencing with Section 2019.010), for the purpose of
9 perpetuating that person's own testimony or that of another
10 natural person or organization, or of preserving evidence for use
11 in the event an action is subsequently filed.

12 (b) One shall not employ the procedures of this chapter for the
13 purpose either of ascertaining the possible existence of a cause of
14 action or a defense to it, or of identifying those who might be
15 made parties to an action not yet filed.

16 SEC. 12. Section 2035.030 of the Code of Civil Procedure is
17 amended to read:

18 2035.030. (a) One who desires to perpetuate testimony or
19 preserve evidence for the purposes set forth in Section 2035.010
20 shall file a verified petition in the superior court of the county of
21 the residence of at least one expected adverse party, or, if no
22 expected adverse party is a resident of the State of California, in
23 the superior court of a county where the action or proceeding
24 may be filed.

25 (b) The petition shall be titled in the name of the one who
26 desires the perpetuation of testimony or the preservation of
27 evidence. The petition shall set forth all of the following:

28 (1) The expectation that the petitioner or the petitioner's
29 successor in interest will be a party to an action cognizable in a
30 court of the State of California.

31 (2) The present inability of the petitioner and, if applicable, the
32 petitioner's successor in interest either to bring that action or to
33 cause it to be brought.

34 (3) The subject matter of the expected action and the
35 petitioner's involvement. A copy of any written instrument the
36 validity or construction of which may be called into question, or
37 which is connected with the subject matter of the proposed
38 discovery, shall be attached to the petition.

39 (4) The particular discovery methods described in Section
40 2035.020 that the petitioner desires to employ.

1 (5) The facts that the petitioner desires to establish by the
2 proposed discovery.

3 (6) The reasons for desiring to perpetuate or preserve these
4 facts before an action has been filed.

5 (7) The name or a description of those whom the petitioner
6 expects to be adverse parties so far as known.

7 (8) The name and address of those from whom the discovery
8 is to be sought.

9 (9) The substance of the information expected to be elicited
10 from each of those from whom discovery is being sought.

11 (c) The petition shall request the court to enter an order
12 authorizing the petitioner to engage in discovery by the described
13 methods for the purpose of perpetuating the described testimony
14 or preserving the described evidence.

15 SEC. 13. Section 2035.050 of the Code of Civil Procedure is
16 amended to read:

17 2035.050. (a) If the court determines that all or part of the
18 discovery requested under this chapter may prevent a failure or
19 delay of justice, it shall make an order authorizing that discovery.
20 In determining whether to authorize discovery by a petitioner
21 who expects a successor in interest to be a party to an action, the
22 court shall consider, in addition to other appropriate factors,
23 whether the requested discovery could be conducted by the
24 petitioner's successor in interest, instead of by the petitioner.

25 (b) The order shall identify any witness whose deposition may
26 be taken, and any documents, things, or places that may be
27 inspected, and any person whose physical or mental condition
28 may be examined.

29 (c) Any authorized depositions, inspections, and physical or
30 mental examinations shall then be conducted in accordance with
31 the provisions of this title relating to those methods of discovery
32 in actions that have been filed.

33 SEC. 14. Section 2035.060 of the Code of Civil Procedure is
34 amended to read:

35 2035.060. If a deposition to perpetuate testimony has been
36 taken either under the provisions of this chapter, or under
37 comparable provisions of the laws of the state in which it was
38 taken, or the federal courts, or a foreign nation in which it was
39 taken, that deposition may be used, in any action involving the
40 same subject matter that is brought in a court of the State of

1 California, in accordance with Section 2025.620 against any
2 party, or the successor in interest of any party, named in the
3 petition as an expected adverse party.

4 SEC. 15. Section 44944 of the Education Code is amended to
5 read:

6 44944. (a) In a dismissal or suspension proceeding initiated
7 pursuant to Section 44934, if a hearing is requested by the
8 employee, the hearing shall be commenced within 60 days from
9 the date of the employee's demand for a hearing. The hearing
10 shall be initiated, conducted, and a decision made in accordance
11 with Chapter 5 (commencing with Section 11500) of Part 1 of
12 Division 3 of Title 2 of the Government Code. However, the
13 hearing date shall be established after consultation with the
14 employee and the governing board, or their representatives, and
15 the Commission on Professional Competence shall have all the
16 power granted to an agency in that chapter, except that the right
17 of discovery of the parties shall not be limited to those matters
18 set forth in Section 11507.6 of the Government Code but shall
19 include the rights and duties of any party in a civil action brought
20 in a superior court under Title 4 (commencing with Section
21 2016.010) of Part 4 of the Code of Civil Procedure.
22 Notwithstanding any provision to the contrary, and except for the
23 taking of oral depositions, no discovery shall occur later than 30
24 calendar days after the employee is served with a copy of the
25 accusation pursuant to Section 11505 of the Government Code.
26 In all cases, discovery shall be completed prior to seven calendar
27 days before the date upon which the hearing commences. If any
28 continuance is granted pursuant to Section 11524 of the
29 Government Code, the time limitation for commencement of the
30 hearing as provided in this subdivision shall be extended for a
31 period of time equal to the continuance. However, the extension
32 shall not include that period of time attributable to an unlawful
33 refusal by either party to allow the discovery provided for in this
34 section.

35 If the right of discovery granted under the preceding paragraph
36 is denied by either the employee or the governing board, all the
37 remedies in Chapter 7 (commencing with Section 2023.010) of
38 Title 4 of Part 4 of the Code of Civil Procedure shall be available
39 to the party seeking discovery and the court of proper

1 jurisdiction, to entertain his or her motion, shall be the superior
2 court of the county in which the hearing will be held.

3 The time periods in this section and of Chapter 5 (commencing
4 with Section 11500) of Part 1 of Division 3 of Title 2 of the
5 Government Code and of Title 4 (commencing with Section
6 2016.010) of Part 4 of the Code of Civil Procedure shall not be
7 applied so as to deny discovery in a hearing conducted pursuant
8 to this section.

9 The superior court of the county in which the hearing will be
10 held may, upon motion of the party seeking discovery, suspend
11 the hearing so as to comply with the requirement of the preceding
12 paragraph.

13 No witness shall be permitted to testify at the hearing except
14 upon oath or affirmation. No testimony shall be given or
15 evidence introduced relating to matters which occurred more
16 than four years prior to the date of the filing of the notice.
17 Evidence of records regularly kept by the governing board
18 concerning the employee may be introduced, but no decision
19 relating to the dismissal or suspension of any employee shall be
20 made based on charges or evidence of any nature relating to
21 matters occurring more than four years prior to the filing of the
22 notice.

23 (b) The hearing provided for in this section shall be conducted
24 by a Commission on Professional Competence. One member of
25 the commission shall be selected by the employee, one member
26 shall be selected by the governing board, and one member shall
27 be an administrative law judge of the Office of Administrative
28 Hearings who shall be chairperson and a voting member of the
29 commission and shall be responsible for assuring that the legal
30 rights of the parties are protected at the hearing. If either the
31 governing board or the employee for any reason fails to select a
32 commission member at least seven calendar days prior to the date
33 of the hearing, the failure shall constitute a waiver of the right to
34 selection, and the county board of education or its specific
35 designee shall immediately make the selection. When the county
36 board of education is also the governing board of the school
37 district or has by statute been granted the powers of a governing
38 board, the selection shall be made by the Superintendent of
39 Public Instruction, who shall be reimbursed by the school district
40 for all costs incident to the selection.

1 The member selected by the governing board and the member
2 selected by the employee shall not be related to the employee and
3 shall not be employees of the district initiating the dismissal or
4 suspension and shall hold a currently valid credential and have at
5 least five years' experience within the past 10 years in the
6 discipline of the employee.

7 (c) The decision of the Commission on Professional
8 Competence shall be made by a majority vote, and the
9 commission shall prepare a written decision containing findings
10 of fact, determinations of issues, and a disposition which shall be,
11 solely:

12 (1) That the employee should be dismissed.

13 (2) That the employee should be suspended for a specific
14 period of time without pay.

15 (3) That the employee should not be dismissed or suspended.

16 The decision of the Commission on Professional Competence
17 that the employee should not be dismissed or suspended shall not
18 be based on nonsubstantive procedural errors committed by the
19 school district or governing board unless the errors are
20 prejudicial errors.

21 The commission shall not have the power to dispose of the
22 charge of dismissal by imposing probation or other alternative
23 sanctions. The imposition of suspension pursuant to paragraph
24 (2) shall be available only in a suspension proceeding authorized
25 pursuant to subdivision (b) of Section 44932 or Section 44933.

26 The decision of the Commission on Professional Competence
27 shall be deemed to be the final decision of the governing board.

28 The board may adopt from time to time rules and procedures
29 not inconsistent with provisions of this section as may be
30 necessary to effectuate this section.

31 The governing board and the employee shall have the right to
32 be represented by counsel.

33 (d) (1) If the member selected by the governing board or the
34 member selected by the employee is employed by any school
35 district in this state the member shall, during any service on a
36 Commission on Professional Competence, continue to receive
37 salary, fringe benefits, accumulated sick leave, and other leaves
38 and benefits from the district in which the member is employed,
39 but shall receive no additional compensation or honorariums for
40 service on the commission.

1 (2) If service on a Commission on Professional Competence
2 occurs during summer recess or vacation periods, the member
3 shall receive compensation proportionate to that received during
4 the current or immediately preceding contract period from the
5 member's employing district, whichever amount is greater.

6 (e) If the Commission on Professional Competence determines
7 that the employee should be dismissed or suspended, the
8 governing board and the employee shall share equally the
9 expenses of the hearing, including the cost of the administrative
10 law judge. The state shall pay any costs incurred under paragraph
11 (2) of subdivision (d), the reasonable expenses, as determined by
12 the administrative law judge, of the member selected by the
13 governing board and the member selected by the employee,
14 including, but not limited to, payments or obligations incurred for
15 travel, meals, and lodging, and the cost of the substitute or
16 substitutes, if any, for the member selected by the governing
17 board and the member selected by the employee. The Controller
18 shall pay all claims submitted pursuant to this paragraph from the
19 General Fund, and may prescribe reasonable rules, regulations,
20 and forms for the submission of the claims. The employee and
21 the governing board shall pay their own attorney fees.

22 If the Commission on Professional Competence determines
23 that the employee should not be dismissed or suspended, the
24 governing board shall pay the expenses of the hearing, including
25 the cost of the administrative law judge, any costs incurred under
26 paragraph (2) of subdivision (d), the reasonable expenses, as
27 determined by the administrative law judge, of the member
28 selected by the governing board and the member selected by the
29 employee, including, but not limited to, payments or obligations
30 incurred for travel, meals, and lodging, the cost of the substitute
31 or substitutes, if any, for the member selected by the governing
32 board and the member selected by the employee, and reasonable
33 attorney fees incurred by the employee.

34 As used in this section, "reasonable expenses" shall not be
35 deemed "compensation" within the meaning of subdivision (d).

36 If either the governing board or the employee petitions a court
37 of competent jurisdiction for review of the decision of the
38 commission, the payment of expenses to members of the
39 commission required by this subdivision shall not be stayed.

1 If the decision of the commission is finally reversed or vacated
2 by a court of competent jurisdiction, then either the state, having
3 paid the commission members' expenses, shall be entitled to
4 reimbursement from the governing board for those expenses, or
5 the governing board, having paid the expenses, shall be entitled
6 to reimbursement from the state.

7 Additionally, either the employee, having paid a portion of the
8 expenses of the hearing, including the cost of the administrative
9 law judge, shall be entitled to reimbursement from the governing
10 board for the expenses, or the governing board, having paid its
11 portion and the employee's portion of the expenses of the
12 hearing, including the cost of the administrative law judge, shall
13 be entitled to reimbursement from the employee for that portion
14 of the expenses.

15 (f) The hearing provided for in this section shall be conducted
16 in a place selected by agreement among the members of the
17 commission. In the absence of agreement, the place shall be
18 selected by the administrative law judge.

19 SEC. 16. Section 1560 of the Evidence Code is amended to
20 read:

21 1560. (a) As used in this article:

22 (1) "Business" includes every kind of business described in
23 Section 1270.

24 (2) "Record" includes every kind of record maintained by a
25 business.

26 (b) Except as provided in Section 1564, when a subpoena
27 duces tecum is served upon the custodian of records or other
28 qualified witness of a business in an action in which the business
29 is neither a party nor the place where any cause of action is
30 alleged to have arisen, and the subpoena requires the production
31 of all or any part of the records of the business, it is sufficient
32 compliance therewith if the custodian or other qualified witness,
33 within five days after the receipt of the subpoena in any criminal
34 action or within the time agreed upon by the party who served
35 the subpoena and the custodian or other qualified witness, or
36 within 15 days after the receipt of the subpoena in any civil
37 action or within the time agreed upon by the party who served
38 the subpoena and the custodian or other qualified witness,
39 delivers by mail or otherwise a true, legible, and durable copy of
40 all the records described in the subpoena to the clerk of the court

1 or to another person described in subdivision (d) of Section
2 2026.010 of the Code of Civil Procedure, together with the
3 affidavit described in Section 1561.

4 (c) The copy of the records shall be separately enclosed in an
5 inner envelope or wrapper, sealed, with the title and number of
6 the action, name of witness, and date of subpoena clearly
7 inscribed thereon; the sealed envelope or wrapper shall then be
8 enclosed in an outer envelope or wrapper, sealed, and directed as
9 follows:

10 (1) If the subpoena directs attendance in court, to the clerk of
11 the court.

12 (2) If the subpoena directs attendance at a deposition, to the
13 officer before whom the deposition is to be taken, at the place
14 designated in the subpoena for the taking of the deposition or at
15 the officer's place of business.

16 (3) In other cases, to the officer, body, or tribunal conducting
17 the hearing, at a like address.

18 (d) Unless the parties to the proceeding otherwise agree, or
19 unless the sealed envelope or wrapper is returned to a witness
20 who is to appear personally, the copy of the records shall remain
21 sealed and shall be opened only at the time of trial, deposition, or
22 other hearing, upon the direction of the judge, officer, body, or
23 tribunal conducting the proceeding, in the presence of all parties
24 who have appeared in person or by counsel at the trial,
25 deposition, or hearing. Records which are original documents
26 and which are not introduced in evidence or required as part of
27 the record shall be returned to the person or entity from whom
28 received. Records which are copies may be destroyed.

29 (e) As an alternative to the procedures described in
30 subdivisions (b), (c), and (d), the subpoenaing party in a civil
31 action may direct the witness to make the records available for
32 inspection or copying by the party's attorney, the attorney's
33 representative, or deposition officer as described in Section
34 2020.420 of the Code of Civil Procedure, at the witness' business
35 address under reasonable conditions during normal business
36 hours. Normal business hours, as used in this subdivision, means
37 those hours that the business of the witness is normally open for
38 business to the public. When provided with at least five business
39 days' advance notice by the party's attorney, attorney's
40 representative, or deposition officer, the witness shall designate a

1 time period of not less than six continuous hours on a date certain
2 for copying of records subject to the subpoena by the party's
3 attorney, attorney's representative or deposition officer. It shall
4 be the responsibility of the attorney's representative to deliver
5 any copy of the records as directed in the subpoena.
6 Disobedience to the deposition subpoena issued pursuant to this
7 subdivision is punishable as provided in Section 2020.240 of the
8 Code of Civil Procedure.

9 SEC. 17. Section 12963.3 of the Government Code is
10 amended to read:

11 12963.3. (a) Depositions taken by the department shall be
12 noticed by issuance and service of a subpoena pursuant to
13 Section 12963.1. If, in the course of the investigation of a
14 complaint, a subpoena is issued and served on an individual or
15 organization not alleged in the complaint to have committed an
16 unlawful practice, written notice of the deposition shall also be
17 mailed by the department to each individual or organization
18 alleged in the complaint to have committed an unlawful practice.

19 (b) A deposition may be taken before any officer of the
20 department who has been authorized by the director to administer
21 oaths and take testimony, or before any other person before
22 whom a deposition may be taken in a civil action pursuant to
23 Section 2025.320 or subdivision (d) of Section 2026.010 of the
24 Code of Civil Procedure. The person before whom the deposition
25 is to be taken shall put the witness on oath and shall personally,
26 or by someone acting under the person's direction and in the
27 person's presence, record the testimony of the witness. The
28 testimony shall be taken stenographically and transcribed unless
29 the parties agree otherwise. All objections made at the time of the
30 examination shall be noted on the deposition by the person
31 before whom the deposition is taken, and evidence objected to
32 shall be taken subject to the objections.

33 SEC. 18. Section 12972 of the Government Code is amended
34 to read:

35 12972. (a) The commission shall conduct all actions and
36 procedures in accordance with its procedural regulations.

37 (b) (1) If the commission does not have a procedural
38 regulation on a particular issue, the commission shall rely upon
39 pertinent provisions of the Administrative Procedure Act
40 (Chapter 4 (commencing with Section 11370) of Part 1).

(2) Notwithstanding paragraph (1), the Administrative Adjudication Bill of Rights set forth in Article 6 (commencing with Section 11425.10) of Chapter 4.5 of Part 1, and the rules for judicial review set forth in Section 11523, shall apply to the commission.

(c) In addition to the discovery available to each party pursuant to subdivision (a), the department and the respondent may each cause a single deposition to be taken in the manner prescribed by law for depositions in civil actions in the superior courts of this state under Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure.

SEC. 19. Section 68097.6 of the Government Code is amended to read:

68097.6. Sections 68097.1, 68097.2, 68097.3, 68097.4, and 68097.5 apply to subpoenas issued for the taking of depositions of employees of the Department of Justice who are peace officers or analysts in technical fields, peace officers of the Department of the California Highway Patrol, peace officer members of the State Fire Marshal's office, sheriffs, deputy sheriffs, marshals, deputy marshals, firefighters, or city police officers pursuant to Chapter 9 (commencing with Section 2025.010) of Title 4 of Part 4 of the Code of Civil Procedure.

SEC. 20. Section 1424.1 of the Health and Safety Code is amended to read:

1424.1. (a) On and after the effective date of this section, no citation shall be issued or sustained under this chapter for a violation of any regulation discovered and recorded by a facility if all of the following conditions have been met:

(1) The facility maintains an ongoing quality assurance and patient care audit program, which includes maintenance of a quality assurance log which is made available to the state department at the commencement of each inspection and investigation. The facility shall retain this log for the current year and the preceding three years.

(2) The violation was not willful and resulted in no actual harm to any patient or guest.

(3) The violation was first discovered by the licensee and was promptly and accurately recorded in the quality assurance log prior to discovery by the state department.

(4) Promptly upon discovery, the facility implemented remedial action satisfactory to the state department to correct the violation and prevent a recurrence. If the state department determines that remedial action voluntarily undertaken by the facility is unsatisfactory, the state department shall allow the facility reasonable time to augment the remedial action before the condition shall be deemed to be a violation.

(b) Except as otherwise provided in this section, a quality assurance log which meets the criteria of this section shall not be discoverable or admissible in any action against the licensee. The quality assurance log shall be discoverable pursuant to a motion to produce under Chapter 14 (commencing with Section 2031.010) of Title 4 of Part 4 of the Code of Civil Procedure and admissible only for purposes of impeachment. However, the court, in a motion pursuant to Section 2025.420 of the Code of Civil Procedure, or at trial or other proceeding, may limit access to those entries which would be admissible for impeachment purposes.

(c) The quality assurance log shall be made available upon request to any of the following:

(1) Full-time state employees of the Office of the State Long-Term Care Ombudsman.

(2) Ombudsman coordinators, as defined in Section 9701 of the Welfare and Institutions Code.

(3) Ombudsmen qualified by medical training as defined in Section 9701 of the Welfare and Institutions Code, with the approval of either the State Long-Term Care Ombudsman or ombudsman coordinator.

The licensee may make the quality assurance log available, in the licensee's discretion, to any representative of the Office of the State Long-Term Care Ombudsman, as defined in Section 9701 of the Welfare and Institutions Code, without liability for the disclosure. Each representative of the Office of the State Long-Term Care Ombudsman who has been provided access to a facility's quality assurance log pursuant to this section shall maintain all disclosures in confidence.

SEC. 21. Section 11580.2 of the Insurance Code is amended to read:

11580.2. (a) (1) No policy of bodily injury liability insurance covering liability arising out of the ownership,

1 maintenance, or use of any motor vehicle, except for policies that
2 provide insurance in the Republic of Mexico issued or delivered
3 in this state by nonadmitted Mexican insurers, shall be issued or
4 delivered in this state to the owner or operator of a motor vehicle,
5 or shall be issued or delivered by any insurer licensed in this state
6 upon any motor vehicle then principally used or principally
7 garaged in this state, unless the policy contains, or has added to it
8 by endorsement, a provision with coverage limits at least equal to
9 the limits specified in subdivision (m) and in no case less than
10 the financial responsibility requirements specified in Section
11 16056 of the Vehicle Code insuring the insured, the insured's
12 heirs or legal representative for all sums within the limits that he,
13 she, or they, as the case may be, shall be legally entitled to
14 recover as damages for bodily injury or wrongful death from the
15 owner or operator of an uninsured motor vehicle. The insurer and
16 any named insured, prior to or subsequent to the issuance or
17 renewal of a policy, may, by agreement in writing, in the form
18 specified in paragraph (2) or paragraph (3), (1) delete the
19 provision covering damage caused by an uninsured motor vehicle
20 completely, or (2) delete the coverage when a motor vehicle is
21 operated by a natural person or persons designated by name, or
22 (3) agree to provide the coverage in an amount less than that
23 required by subdivision (m) but not less than the financial
24 responsibility requirements specified in Section 16056 of the
25 Vehicle Code. Any of these agreements by any named insured or
26 agreement for the amount of coverage shall be binding upon
27 every insured to whom the policy or endorsement provisions
28 apply while the policy is in force, and shall continue to be so
29 binding with respect to any continuation or renewal of the policy
30 or with respect to any other policy that extends, changes,
31 supersedes, or replaces the policy issued to the named insured by
32 the same insurer, or with respect to reinstatement of the policy
33 within 30 days of any lapse thereof. A policy shall be excluded
34 from the application of this section if the automobile liability
35 coverage is provided only on an excess or umbrella basis.
36 Nothing in this section shall require that uninsured motorist
37 coverage be offered or provided in any homeowner policy,
38 personal and residents' liability policy, comprehensive personal
39 liability policy, manufacturers' and contractors' policy, premises
40 liability policy, special multiperil policy, or any other policy or

endorsement where automobile liability coverage is offered as incidental to some other basic coverage, notwithstanding that the policy may provide automobile or motor vehicle liability coverage on insured premises or the ways immediately adjoining.

(2) The agreement specified in paragraph (1) to delete the provision covering damage caused by an uninsured motor vehicle completely or delete the coverage when a motor vehicle is operated by a natural person or persons designated by name shall be in the following form:

“The California Insurance Code requires an insurer to provide uninsured motorists coverage in each bodily injury liability insurance policy it issues covering liability arising out of the ownership, maintenance, or use of a motor vehicle. Those provisions also permit the insurer and the applicant to delete the coverage completely or to delete the coverage when a motor vehicle is operated by a natural person or persons designated by name. Uninsured motorists coverage insures the insured, his or her heirs, or legal representatives for all sums within the limits established by law, that the person or persons are legally entitled to recover as damages for bodily injury, including any resulting sickness, disease, or death, to the insured from the owner or operator of an uninsured motor vehicle not owned or operated by the insured or a resident of the same household. An uninsured motor vehicle includes an underinsured motor vehicle as defined in subdivision (p) of Section 11580.2 of the Insurance Code.”

The agreement may contain additional statements not in derogation of or in conflict with the foregoing. The execution of the agreement shall relieve the insurer of liability under this section while the agreement remains in effect.

(3) The agreement specified in paragraph (1) to provide coverage in an amount less than that required by subdivision (m) shall be in the following form:

“The California Insurance Code requires an insurer to provide uninsured motorists coverage in each bodily injury liability insurance policy it issues covering liability arising out of the ownership, maintenance, or use of a motor vehicle. Those provisions also permit the insurer and the applicant to agree to provide the coverage in an amount less than that required by subdivision (m) of Section 11580.2 of the Insurance Code but not less than the financial responsibility requirements. Uninsured

1 motorists coverage insures the insured, his or her heirs, or legal
2 representatives for all sums within the limits established by law,
3 that the person or persons are legally entitled to recover as
4 damages for bodily injury, including any resulting sickness,
5 disease, or death, to the insured from the owner or operator of an
6 uninsured motor vehicle not owned or operated by the insured or
7 a resident of the same household. An uninsured motor vehicle
8 includes an underinsured motor vehicle as defined in subdivision
9 (p) of Section 11580.2 of the Insurance Code.”

10 The agreement may contain additional statements not in
11 derogation of or in conflict with this paragraph. However, it shall
12 be presumed that an application for a policy of bodily injury
13 liability insurance containing uninsured motorist coverage in an
14 amount less than that required by subdivision (m), signed by the
15 named insured and approved by the insurer, with a policy
16 effective date after January 1, 1985, shall be a valid agreement as
17 to the amount of uninsured motorist coverage to be provided.

18 (b) As used in subdivision (a), “bodily injury” includes
19 sickness or disease, including death, resulting therefrom; “named
20 insured” means only the individual or organization named in the
21 declarations of the policy of motor vehicle bodily injury liability
22 insurance referred to in subdivision (a); as used in subdivision (a)
23 if the named insured is an individual “insured” means the named
24 insured and the spouse of the named insured and, while residents
25 of the same household, relatives of either while occupants of a
26 motor vehicle or otherwise, heirs and any other person while in
27 or upon or entering into or alighting from an insured motor
28 vehicle and any person with respect to damages he or she is
29 entitled to recover for care or loss of services because of bodily
30 injury to which the policy provisions or endorsement apply; as
31 used in subdivision (a), if the named insured is an entity other
32 than an individual, “insured” means any person while in or upon
33 or entering into or alighting from an insured motor vehicle and
34 any person with respect to damages he or she is entitled to
35 recover for care or loss of services because of bodily injury to
36 which the policy provisions or endorsement apply. As used in
37 this subdivision, “individual” shall not include persons doing
38 business as corporations, partnerships, or associations. As used in
39 this subdivision, “insured motor vehicle” means the motor
40 vehicle described in the underlying insurance policy of which the

1 uninsured motorist endorsement or coverage is a part, a
2 temporary substitute automobile for which liability coverage is
3 provided in the policy or a newly acquired automobile for which
4 liability coverage is provided in the policy if the motor vehicle is
5 used by the named insured or with his or her permission or
6 consent, express or implied, and any other automobile not owned
7 by or furnished for the regular use of the named insured or any
8 resident of the same household, or by a natural person or persons
9 for whom coverage has been deleted in accordance with
10 subdivision (a) while being operated by the named insured or his
11 or her spouse if a resident of the same household, but “insured
12 motor vehicle” shall not include any automobile while used as a
13 public or livery conveyance. As used in this section, “uninsured
14 motor vehicle” means a motor vehicle with respect to the
15 ownership, maintenance or use of which there is no bodily injury
16 liability insurance or bond applicable at the time of the accident,
17 or there is the applicable insurance or bond but the company
18 writing the insurance or bond denies coverage thereunder or
19 refuses to admit coverage thereunder except conditionally or with
20 reservation, or an “underinsured motor vehicle” as defined in
21 subdivision (p), or a motor vehicle used without the permission
22 of the owner thereof if there is no bodily injury liability insurance
23 or bond applicable at the time of the accident with respect to the
24 owner or operator thereof, or the owner or operator thereof be
25 unknown, provided that, with respect to an “uninsured motor
26 vehicle” whose owner or operator is unknown:

27 (1) The bodily injury has arisen out of physical contact of the
28 automobile with the insured or with an automobile that the
29 insured is occupying.

30 (2) The insured or someone on his or her behalf has reported
31 the accident within 24 hours to the police department of the city
32 where the accident occurred or, if the accident occurred in
33 unincorporated territory then either to the sheriff of the county
34 where the accident occurred or to the local headquarters of the
35 California Highway Patrol, and has filed with the insurer within
36 30 days thereafter a statement under oath that the insured or his
37 or her legal representative has or the insured’s heirs have a cause
38 of action arising out of the accident for damages against a person
39 or persons whose identity is unascertainable and set forth facts in
40 support thereof. As used in this section, “uninsured motor

1 vehicle” shall not include a motor vehicle owned or operated by
2 the named insured or any resident of the same household or
3 self-insured within the meaning of the Financial Responsibility
4 Law of the state in which the motor vehicle is registered or that is
5 owned by the United States of America, Canada, a state or
6 political subdivision of any of those governments or an agency of
7 any of the foregoing, or a land motor vehicle or trailer while
8 located for use as a residence or premises and not as a vehicle, or
9 any equipment or vehicle designed or modified for use primarily
10 off public roads, except while actually upon public roads.

11 As used in this section, “uninsured motor vehicle” also means
12 an insured motor vehicle where the liability insurer thereof is
13 unable to make payment with respect to the legal liability of its
14 insured within the limits specified therein because of insolvency.
15 An insurer’s solvency protection shall be applicable only to
16 accidents occurring during a policy period in which its insured’s
17 motor vehicle coverage is in effect where the liability insurer of
18 the tortfeasor becomes insolvent within one year of the accident.
19 In the event of payment to any person under the coverage
20 required by this section and subject to the terms and conditions of
21 the coverage, the insurer making the payment, shall to the extent
22 thereof, be entitled to any proceeds that may be recoverable from
23 the assets of the insolvent insurer through any settlement or
24 judgment of the person against the insolvent insurer.

25 Nothing in this section is intended to exclude from the
26 definition of an uninsured motor vehicle any motorcycle or
27 private passenger-type four-wheel drive motor vehicle if that
28 vehicle was subject to and failed to comply with the Financial
29 Responsibility Law of this state.

30 (c) The insurance coverage provided for in this section does
31 not apply either as primary or as excess coverage:

32 (1) To property damage sustained by the insured.

33 (2) To bodily injury of the insured while in or upon or while
34 entering into or alighting from a motor vehicle other than the
35 described motor vehicle if the owner thereof has insurance
36 similar to that provided in this section.

37 (3) To bodily injury of the insured with respect to which the
38 insured or his or her representative shall, without the written
39 consent of the insurer, make any settlement with or prosecute to

1 judgment any action against any person who may be legally
2 liable therefor.

3 (4) In any instance where it would inure directly or indirectly
4 to the benefit of any workers' compensation carrier or to any
5 person qualified as a self-insurer under any workers'
6 compensation law, or directly to the benefit of the United States,
7 or any state or any political subdivision thereof.

8 (5) To establish proof of financial responsibility as provided in
9 Section 16054 of the Vehicle Code.

10 (6) To bodily injury of the insured while occupying a motor
11 vehicle owned by an insured or leased to an insured under a
12 written contract for a period of six months or longer, unless the
13 occupied vehicle is an insured motor vehicle. "Motor vehicle" as
14 used in this paragraph means any self-propelled vehicle.

15 (7) To bodily injury of the insured when struck by a vehicle
16 owned by an insured, except when the injured insured's vehicle
17 is being operated, or caused to be operated, by a person without
18 the injured insured's consent in connection with criminal activity
19 that has been documented in a police report and that the injured
20 insured is not a party to.

21 (8) To bodily injury of the insured while occupying a motor
22 vehicle rented or leased to the insured for public or livery
23 purposes.

24 (d) Subject to paragraph (2) of subdivision (c), the policy or
25 endorsement may provide that if the insured has insurance
26 available to the insured under more than one uninsured motorist
27 coverage provision, any damages shall not be deemed to exceed
28 the higher of the applicable limits of the respective coverages,
29 and the damages shall be prorated between the applicable
30 coverages as the limits of each coverage bear to the total of the
31 limits.

32 (e) The policy or endorsement added thereto may provide that
33 if the insured has valid and collectible automobile medical
34 payment insurance available to him or her, the damages that the
35 insured shall be entitled to recover from the owner or operator of
36 an uninsured motor vehicle shall be reduced for purposes of
37 uninsured motorist coverage by the amounts paid or due to be
38 paid under the automobile medical payment insurance.

39 (f) The policy or an endorsement added thereto shall provide
40 that the determination as to whether the insured shall be legally

entitled to recover damages, and if so entitled, the amount thereof, shall be made by agreement between the insured and the insurer or, in the event of disagreement, by arbitration. The arbitration shall be conducted by a single neutral arbitrator. An award or a judgment confirming an award shall not be conclusive on any party in any action or proceeding between (i) the insured, his or her insurer, his or her legal representative, or his or her heirs and (ii) the uninsured motorist to recover damages arising out of the accident upon which the award is based. If the insured has or may have rights to benefits, other than nonoccupational disability benefits, under any workers' compensation law, the arbitrator shall not proceed with the arbitration until the insured's physical condition is stationary and ratable. In those cases in which the insured claims a permanent disability, the claims shall, unless good cause be shown, be adjudicated by award or settled by compromise and release before the arbitration may proceed. Any demand or petition for arbitration shall contain a declaration, under penalty of perjury, stating whether (i) the insured has a workers' compensation claim; (ii) the claim has proceeded to findings and award or settlement on all issues reasonably contemplated to be determined in that claim; and (iii) if not, what reasons amounting to good cause are grounds for the arbitration to proceed immediately. The arbitration shall be deemed to be a proceeding and the hearing before the arbitrator shall be deemed to be the trial of an issue therein for purposes of issuance of a subpoena by an attorney of a party to the arbitration under Section 1985 of the Code of Civil Procedure. Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure shall be applicable to these determinations, and all rights, remedies, obligations, liabilities and procedures set forth in Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure shall be available to both the insured and the insurer at any time after the accident, both before and after the commencement of arbitration, if any, with the following limitations:

(1) Whenever in Title 4 (commencing with Section 2016.010) of Part 4 of the Code of Civil Procedure, reference is made to the court in which the action is pending, or provision is made for application to the court or obtaining leave of court or approval by the court, the court that shall have jurisdiction for the purposes of

1 this section shall be the superior court of the State of California,
2 in and for any county that is a proper county for the filing of a
3 suit for bodily injury arising out of the accident, against the
4 uninsured motorist, or any county specified in the policy or an
5 endorsement added thereto as a proper county for arbitration or
6 action thereon.

7 (2) Any proper court to which application is first made by
8 either the insured or the insurer under Title 4 (commencing with
9 Section 2016.010) of Part 4 of the Code of Civil Procedure for
10 any discovery or other relief or remedy, shall thereafter be the
11 only court to which either of the parties shall make any
12 applications under Title 4 (commencing with Section 2016.010)
13 of Part 4 of the Code of Civil Procedure with respect to the same
14 accident, subject, however, to the right of the court to grant a
15 change of venue after a hearing upon notice, upon any of the
16 grounds upon which change of venue might be granted in an
17 action filed in the superior court.

18 (3) A deposition pursuant to Chapter 9 (commencing with
19 Section 2025.010) of Title 4 of Part 4 of the Code of Civil
20 Procedure may be taken without leave of court, except that leave
21 of court, granted with or without notice and for good cause
22 shown, must be obtained if the notice of the taking of the
23 deposition is served by either party within 20 days after the
24 accident.

25 (4) Subdivision (a) of Section 2025.280 of the Code of Civil
26 Procedure is not applicable to discovery under this section.

27 (5) For the purposes of discovery under this section, the
28 insured and the insurer shall each be deemed to be “a party to the
29 action,” where that phrase is used in Section 2025.260 of the
30 Code of Civil Procedure.

31 (6) Interrogatories under Chapter 13 (commencing with
32 Section 2030.010) of Title 4 of Part 4 of the Code of Civil
33 Procedure and requests for admission under Chapter 16
34 (commencing with Section 2033.010) of Title 4 of Part 4 of the
35 Code of Civil Procedure may be served by either the insured or
36 the insurer upon the other at any time more than 20 days after the
37 accident without leave of court.

38 (7) Nothing in this section limits the rights of any party to
39 discovery in any action pending or that may hereafter be pending
40 in any court.

1 (g) The insurer paying a claim under an uninsured motorist
2 endorsement or coverage shall be entitled to be subrogated to the
3 rights of the insured to whom the claim was paid against any
4 person legally liable for the injury or death to the extent that
5 payment was made. The action may be brought within three
6 years from the date that payment was made hereunder.

7 (h) An insured entitled to recovery under the uninsured
8 motorist endorsement or coverage shall be reimbursed within the
9 conditions stated herein without being required to sign any
10 release or waiver of rights to which he or she may be entitled
11 under any other insurance coverage applicable; nor shall payment
12 under this section to the insured be delayed or made contingent
13 upon the decisions as to liability or distribution of loss costs
14 under other bodily injury liability insurance or any bond
15 applicable to the accident. Any loss payable under the terms of
16 the uninsured motorist endorsement or coverage to or for any
17 person may be reduced:

18 (1) By the amount paid and the present value of all amounts
19 payable to him or her, his or her executor, administrator, heirs, or
20 legal representative under any workers' compensation law,
21 exclusive of nonoccupational disability benefits.

22 (2) By the amount the insured is entitled to recover from any
23 other person insured under the underlying liability insurance
24 policy of which the uninsured motorist endorsement or coverage
25 is a part, including any amounts tendered to the insured as
26 advance payment on behalf of the other person by the insurer
27 providing the underlying liability insurance.

28 (i) (1) No cause of action shall accrue to the insured under
29 any policy or endorsement provision issued pursuant to this
30 section unless one of the following actions have been taken
31 within two years from the date of the accident:

32 (A) Suit for bodily injury has been filed against the uninsured
33 motorist, in a court of competent jurisdiction.

34 (B) Agreement as to the amount due under the policy has been
35 concluded.

36 (C) The insured has formally instituted arbitration proceedings
37 by notifying the insurer in writing sent by certified mail, return
38 receipt requested. Notice shall be sent to the insurer or to the
39 agent for process designated by the insurer filed with the
40 department.

(2) Any arbitration instituted pursuant to this section shall be concluded either:

(A) Within five years from the institution of the arbitration proceeding.

(B) If the insured has a workers' compensation claim arising from the same accident, within three years of the date the claim is concluded, or within the five-year period set forth in subparagraph (A), whichever occurs later.

(3) The doctrines of estoppel, waiver, impossibility, impracticability, and futility apply to excuse a party's noncompliance with the statutory timeframe, as determined by the court.

(4) Parties to the insurance contract may stipulate in writing to extending the time to conclude arbitration.

(j) Notwithstanding subdivisions (b) and (i), in the event the accident occurs in any other state or foreign jurisdiction to which coverage is extended under the policy and the insurer of the tortfeasor becomes insolvent, any action authorized pursuant to this section may be maintained within three months of the insolvency of the tortfeasor's insurer, but in no event later than the pertinent period of limitation of the jurisdiction in which the accident occurred.

(k) Notwithstanding subdivision (i), any insurer whose insured has made a claim under his or her uninsured motorist coverage, and the claim is pending, shall, at least 30 days before the expiration of the applicable statute of limitation, notify its insured in writing of the statute of limitation applicable to the injury or death. Failure of the insurer to provide the written notice shall operate to toll any applicable statute of limitation or other time limitation for a period of 30 days from the date the written notice is actually given. The notice shall not be required if the insurer has received notice that the insured is represented by an attorney.

(l) As used in subdivision (b), "public or livery conveyance," or terms of similar import, shall not include the operation or use of a motor vehicle by the named insured in the performance of volunteer services for a nonprofit charitable organization or governmental agency by providing social service transportation as defined in subdivision (f) of Section 11580.1. This subdivision

1 shall apply only to policies of insurance issued, amended, or
2 renewed on or after January 1, 1976.

3 (m) Coverage provided under an uninsured motorist
4 endorsement or coverage shall be offered with coverage limits
5 equal to the limits of liability for bodily injury in the underlying
6 policy of insurance, but shall not be required to be offered with
7 limits in excess of the following amounts:

8 (1) A limit of thirty thousand dollars (\$30,000) because of
9 bodily injury to or death of one person in any one accident.

10 (2) Subject to the limit for one person set forth in paragraph
11 (1), a limit of sixty thousand dollars (\$60,000) because of bodily
12 injury to or death of two or more persons in any one accident.

13 (n) Underinsured motorist coverage shall be offered with
14 limits equal to the limits of liability for the insured's uninsured
15 motorist limits in the underlying policy, and may be offered with
16 limits in excess of the uninsured motorist coverage. For the
17 purposes of this section, uninsured and underinsured motorist
18 coverage shall be offered as a single coverage. However, an
19 insurer may offer coverage for damages for bodily injury or
20 wrongful death from the owner or operator of an underinsured
21 motor vehicle at greater limits than an uninsured motor vehicle.

22 (o) If an insured has failed to provide an insurer with wage
23 loss information or medical treatment record releases within 15
24 days of the insurer's request or has failed to submit to a medical
25 examination arranged by the insurer within 20 days of the
26 insurer's request, the insurer may, at any time prior to 30 days
27 before the actual arbitration proceedings commence, request, and
28 the insured shall furnish, wage loss information or medical
29 treatment record releases, and the insurer may require the
30 insured, except during periods of hospitalization, to make himself
31 or herself available for a medical examination. The wage loss
32 information or medical treatment record releases shall be
33 submitted by the insured within 10 days of request and the
34 medical examination shall be arranged by the insurer no sooner
35 than 10 days after request, unless the insured agrees to an earlier
36 examination date, and not later than 20 days after the request. If
37 the insured fails to comply with the requirements of this
38 subdivision, the actual arbitration proceedings shall be stayed for
39 at least 30 days following compliance by the insured. The

1 proceedings shall be scheduled as soon as practicable following
2 expiration of the 30-day period.

3 (p) This subdivision applies only when bodily injury, as
4 defined in subdivision (b), is caused by an underinsured motor
5 vehicle. If the provisions of this subdivision conflict with
6 subdivisions (a) through (o), the provisions of this subdivision
7 shall prevail.

8 (1) As used in this subdivision, “an insured motor vehicle” is
9 one that is insured under a motor vehicle liability policy, or
10 automobile liability insurance policy, self-insured, or for which a
11 cash deposit or bond has been posted to satisfy a financial
12 responsibility law.

13 (2) “Underinsured motor vehicle” means a motor vehicle that
14 is an insured motor vehicle but insured for an amount that is less
15 than the uninsured motorist limits carried on the motor vehicle of
16 the injured person.

17 (3) This coverage does not apply to any bodily injury until the
18 limits of bodily injury liability policies applicable to all insured
19 motor vehicles causing the injury have been exhausted by
20 payment of judgments or settlements, and proof of the payment is
21 submitted to the insurer providing the underinsured motorist
22 coverage.

23 (4) When bodily injury is caused by one or more motor
24 vehicles, whether insured, underinsured, or uninsured, the
25 maximum liability of the insurer providing the underinsured
26 motorist coverage shall not exceed the insured’s underinsured
27 motorist coverage limits, less the amount paid to the insured by
28 or for any person or organization that may be held legally liable
29 for the injury.

30 (5) The insurer paying a claim under this subdivision shall, to
31 the extent of the payment, be entitled to reimbursement or credit
32 in the amount received by the insured from the owner or operator
33 of the underinsured motor vehicle or the insurer of the owner or
34 operator.

35 (6) If the insured brings an action against the owner or
36 operator of an underinsured motor vehicle, he or she shall
37 forthwith give to the insurer providing the underinsured motorist
38 coverage a copy of the complaint by personal service or certified
39 mail. All pleadings and depositions shall be made available for

1 copying or copies furnished the insurer, at the insurer's expense,
2 within a reasonable time.

3 (7) Underinsured motorist coverage shall be included in all
4 policies of bodily injury liability insurance providing uninsured
5 motorist coverage issued or renewed on or after July 1, 1985.
6 Notwithstanding this section, an agreement to delete uninsured
7 motorist coverage completely, or with respect to a person or
8 persons designated by name, executed prior to July 1, 1985, shall
9 remain in full force and effect.

10 (q) Regardless of the number of vehicles involved whether
11 insured or not, persons covered, claims made, premiums paid or
12 the number of premiums shown on the policy, in no event shall
13 the limit of liability for two or more motor vehicles or two or
14 more policies be added together, combined, or stacked to
15 determine the limit of insurance coverage available to injured
16 persons.

17 SEC. 22. Section 1524 of the Penal Code is amended to read:

18 1524. (a) A search warrant may be issued upon any of the
19 following grounds:

20 (1) When the property was stolen or embezzled.

21 (2) When the property or things were used as the means of
22 committing a felony.

23 (3) When the property or things are in the possession of any
24 person with the intent to use them as a means of committing a
25 public offense, or in the possession of another to whom he or she
26 may have delivered them for the purpose of concealing them or
27 preventing their being discovered.

28 (4) When the property or things to be seized consist of any
29 item or constitute any evidence that tends to show a felony has
30 been committed, or tends to show that a particular person has
31 committed a felony.

32 (5) When the property or things to be seized consist of
33 evidence that tends to show that sexual exploitation of a child, in
34 violation of Section 311.3, or possession of matter depicting
35 sexual conduct of a person under the age of 18 years, in violation
36 of Section 311.11, has occurred or is occurring.

37 (6) When there is a warrant to arrest a person.

38 (7) When a provider of electronic communication service or
39 remote computing service has records or evidence, as specified in
40 Section 1524.3, showing that property was stolen or embezzled

1 constituting a misdemeanor, or that property or things are in the
2 possession of any person with the intent to use them as a means
3 of committing a misdemeanor public offense, or in the
4 possession of another to whom he or she may have delivered
5 them for the purpose of concealing them or preventing their
6 discovery.

7 (8) When the property or things to be seized include an item or
8 any evidence that tends to show a violation of Section 3700.5 of
9 the Labor Code, or tends to show that a particular person has
10 violated Section 3700.5 of the Labor Code.

11 (b) The property or things or person or persons described in
12 subdivision (a) may be taken on the warrant from any place, or
13 from any person in whose possession the property or things may
14 be.

15 (c) Notwithstanding subdivision (a) or (b), no search warrant
16 shall issue for any documentary evidence in the possession or
17 under the control of any person, who is a lawyer as defined in
18 Section 950 of the Evidence Code, a physician as defined in
19 Section 990 of the Evidence Code, a psychotherapist as defined
20 in Section 1010 of the Evidence Code, or a member of the clergy
21 as defined in Section 1030 of the Evidence Code, and who is not
22 reasonably suspected of engaging or having engaged in criminal
23 activity related to the documentary evidence for which a warrant
24 is requested unless the following procedure has been complied
25 with:

26 (1) At the time of the issuance of the warrant the court shall
27 appoint a special master in accordance with subdivision (d) to
28 accompany the person who will serve the warrant. Upon service
29 of the warrant, the special master shall inform the party served of
30 the specific items being sought and that the party shall have the
31 opportunity to provide the items requested. If the party, in the
32 judgment of the special master, fails to provide the items
33 requested, the special master shall conduct a search for the items
34 in the areas indicated in the search warrant.

35 (2) If the party who has been served states that an item or
36 items should not be disclosed, they shall be sealed by the special
37 master and taken to court for a hearing.

38 At the hearing, the party searched shall be entitled to raise any
39 issues that may be raised pursuant to Section 1538.5 as well as a
40 claim that the item or items are privileged, as provided by law.

1 The hearing shall be held in the superior court. The court shall
2 provide sufficient time for the parties to obtain counsel and make
3 any motions or present any evidence. The hearing shall be held
4 within three days of the service of the warrant unless the court
5 makes a finding that the expedited hearing is impracticable. In
6 that case the matter shall be heard at the earliest possible time.

7 If an item or items are taken to court for a hearing, any
8 limitations of time prescribed in Chapter 2 (commencing with
9 Section 799) of Title 3 of Part 2 shall be tolled from the time of
10 the seizure until the final conclusion of the hearing, including any
11 associated writ or appellate proceedings.

12 (3) The warrant shall, whenever practicable, be served during
13 normal business hours. In addition, the warrant shall be served
14 upon a party who appears to have possession or control of the
15 items sought. If, after reasonable efforts, the party serving the
16 warrant is unable to locate the person, the special master shall
17 seal and return to the court, for determination by the court, any
18 item that appears to be privileged as provided by law.

19 (d) As used in this section, a “special master” is an attorney
20 who is a member in good standing of the California State Bar and
21 who has been selected from a list of qualified attorneys that is
22 maintained by the State Bar particularly for the purposes of
23 conducting the searches described in this section. These attorneys
24 shall serve without compensation. A special master shall be
25 considered a public employee, and the governmental entity that
26 caused the search warrant to be issued shall be considered the
27 employer of the special master and the applicable public entity,
28 for purposes of Division 3.6 (commencing with Section 810) of
29 Title 1 of the Government Code, relating to claims and actions
30 against public entities and public employees. In selecting the
31 special master, the court shall make every reasonable effort to
32 ensure that the person selected has no relationship with any of the
33 parties involved in the pending matter. Any information obtained
34 by the special master shall be confidential and may not be
35 divulged except in direct response to inquiry by the court.

36 In any case in which the magistrate determines that, after
37 reasonable efforts have been made to obtain a special master, a
38 special master is not available and would not be available within
39 a reasonable period of time, the magistrate may direct the party

1 seeking the order to conduct the search in the manner described
2 in this section in lieu of the special master.

3 (e) Any search conducted pursuant to this section by a special
4 master may be conducted in a manner that permits the party
5 serving the warrant or his or her designee to accompany the
6 special master as he or she conducts his or her search. However,
7 that party or his or her designee may not participate in the search
8 nor shall he or she examine any of the items being searched by
9 the special master except upon agreement of the party upon
10 whom the warrant has been served.

11 (f) As used in this section, “documentary evidence” includes,
12 but is not limited to, writings, documents, blueprints, drawings,
13 photographs, computer printouts, microfilms, X-rays, files,
14 diagrams, ledgers, books, tapes, audio and video recordings,
15 films or papers of any type or description.

16 (g) No warrant shall issue for any item or items described in
17 Section 1070 of the Evidence Code.

18 (h) Notwithstanding any other law, no claim of attorney work
19 product as described in Chapter 4 (commencing with Section
20 2018.010) of Title 4 of Part 4 of the Code of Civil Procedure
21 shall be sustained where there is probable cause to believe that
22 the lawyer is engaging or has engaged in criminal activity related
23 to the documentary evidence for which a warrant is requested
24 unless it is established at the hearing with respect to the
25 documentary evidence seized under the warrant that the services
26 of the lawyer were not sought or obtained to enable or aid anyone
27 to commit or plan to commit a crime or a fraud.

28 (i) Nothing in this section is intended to limit an attorney’s
29 ability to request an in camera hearing pursuant to the holding of
30 the Supreme Court of California in *People v. Superior Court*
31 (Laff) (2001) 25 Cal.4th 703.

32 (j) In addition to any other circumstance permitting a
33 magistrate to issue a warrant for a person or property in another
34 county, when the property or things to be seized consist of any
35 item or constitute any evidence that tends to show a violation of
36 Section 530.5, the magistrate may issue a warrant to search a
37 person or property located in another county if the person whose

- 1 identifying information was taken or used resides in the same
- 2 county as the issuing court.

O